

MTC ANNOUNCES SPECIAL, LIMITED TIME VOLUNTARY DISCLOSURE INITIATIVE FOR CERTAIN ONLINE MARKETPLACE SELLERS

State and Local Tax Alert
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Practices & Industries

State & Local Tax

The Multistate Tax Commission (MTC) recently announced a special, limited-time voluntary disclosure initiative for a certain class of online marketplace sellers. Generally, the initiative covers those taxpayers who use a marketplace provider/facilitator (like Amazon's fulfillment program) to facilitate sales into a state where it otherwise does not have any nexus-creating activity. The following states are participating in this initiative in some way: Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin.

In the normal voluntary disclosure context, taxpayers who come forward are granted a limited lookback period and a full abatement of criminal and civil penalties but are required to file tax returns and pay back tax liability and interest for the entire lookback period. Under the MTC's current initiative for online marketplace sellers, taxpayers who meet the criteria outlined below will generally be offered *a waiver of all back tax liability, interest, and penalties for prior tax periods* if they agree to register as a seller/retailer/vendor in the state and timely collect, report, and remit the proper tax and file returns prospectively (beginning no later than December 1, 2017). A few participating states still require the payment of some back taxes.

Taxpayers can pick and choose which states and tax types (sales/use, income/franchise, or both) for which they will seek a disclosure through this initiative. Each of the participating states will consider applications for voluntary disclosure submitted through the MTC between **August 17, 2017** and **October 17, 2017**. To be eligible for this initiative, taxpayers must generally meet the following criteria:

- The taxpayer must be an online marketplace seller using a marketplace facilitator to make sales into the state;
- The taxpayer must represent that it does not have any nexus-creating contacts in the state, other than nexus-creating activity performed by the marketplace facilitator on behalf of the seller or inventory stored in a third-party warehouse or fulfillment center in the state;

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- The taxpayer must not be registered with the state taxing authority for the tax type it seeks to disclose;
- The taxpayer must not have filed returns with the state or paid tax to the state for the tax type it seeks to disclose;
- The taxpayer is not seeking to disclose collected unremitted tax (if the taxpayer has collected but unremitted taxes, the states will not waive the obligation to remit those taxes and applicable penalties and interest);
- The taxpayer must not have been contacted by the state concerning a liability or potential liability for the tax type it seeks to disclose; and
- The taxpayer must timely apply to the state for relief, through the MTC (in order to be considered, the taxpayer must provide an estimate of the back tax liability to the state for the prior 4 years that exceeds \$500).

Taxpayers can apply for this initiative anonymously and need not disclose their identity until they execute the agreement and register with the state. Additionally, taxpayers can withdraw their application with any state at any time prior to the execution of the voluntary disclosure agreement. Each of the states participating in this initiative have agreed not to provide the identity of any taxpayer who participates in this special, limited-time initiative to other taxing jurisdictions, unless they are required to pursuant to a court order or interstate agreement.

Note that each state's offer may differ slightly from the general points above. As noted previously, some of the participating states (Colorado, DC, Massachusetts, Minnesota, Nebraska, and Wisconsin) have not guaranteed a waiver of all potential back tax liability for the lookback period. So, taxpayers who are considering participating in this initiative should consider the specific requirements of the state where they would seek an agreement.

Finally, it is important to remember that taxpayers who participate in this initiative and agree to collect and remit sales tax prospectively, may also be agreeing to file income/franchise tax returns in that state prospectively too, despite the lack of standard nexus-creating activity in the state. Each taxpayer should consider the impact of entering into such an agreement before participating in this initiative. Because the application for the initiative allows taxpayers to delineate not only the states for which they are applying, but also the tax types, taxpayers may be able to limit their participation in the initiative to only sales and use tax if, for instance, the taxpayer applies for participation in a state with economic nexus thresholds for income/franchise tax and the taxpayer does not otherwise meet those economic nexus thresholds.

If you have questions about the program generally, or any of the state-by-state specifics, the SALT team at Hodgson Russ is available to answer your questions. A list of our lawyers may be accessed by clicking on the "state and local tax" link in the box on the upper right-hand of this page.